IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 9618 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE C.L. SONI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**No**
2	To be referred to the Reporter or not ?	**Yes**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**No**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**No**

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VIPULBHAI MANSINGBHAI CHAUDHRY....Petitioner(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

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Appearance:
MR SN SHELAT, SR ADVOCATE with MR PS CHAMPANERI, ADVOCATE for the Petitioner
MR PRAKASH K JANI, ADDITIONAL ADVOCATE GENERAL with MR NEERAJ ASHAR,ASSTT GOVT PLEADER for the Respondent-State

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CORAM: **HONOURABLE MR.JUSTICE C.L. SONI**

Date : 29/09/2015

ORAL JUDGMENT

1. Challenge made in this petition filed under Article 226 of the Constitution of India is to the order dated 10.3.2015 passed by respondent No.2– Cooperation Commissioner and Registrar, Cooperative Societies, Gujarat State removing the petitioner as a Chairman of the Mehsana District Cooperative Milk Producers' Union Limited ("the Union") and disqualifying him from holding any office in

any cooperative society or to contest the election for a period of three years in exercise of the powers under section 76(B) (1)(2) of the Gujarat Cooperative Societies Act, 1961 ("the Act") and to the order dated 8.5.2015 rejecting his revision application.

2. It is pointed out that the term of the petitioner as a Chairman has come to an end. However, since the disqualification is based on his removal as a Chairman, challenge to the order of removal will also be required to be examined.

3. It appears that the show cause notice dated 12.1.2015 at annexure A was issued to the petitioner for action under section 76(B) (1)(2) of the Act alleging financial and administrative irregularities as mentioned in 12 different charges levelled against him in the show cause notice. The petitioner, initially, submitted provisional reply dated 29.1.2015 and then, final reply dated 12.2.2015 to the show cause notice. After considering the reply of the petitioner, respondent No.2 passed impugned order of his removal and disqualification.

4. Learned Senior Advocate Mr. S.N.Shelat appearing with learned Advocate Mr. P.S. Champaneri for the petitioner submitted that the petitioner was elected Chairman of the union and as per bye-law-44 of the Union, duty of the Chairman is to have control and not to exercise the control like exercise of supervisory power. Mr. Shelat submitted that all decisions concerning policy, finance and administration are taken collectively by the Board of Directors and the Managing Director is the executive authority who has to implement the decision taken by the Board of Directors and take other executive actions in connection with the affairs of the union. Mr. Shelat submitted that in view of bye-law 44, the Chairman cannot be made personally responsible for alleged acts described in different charges in the show cause notice. Mr. Shelat submitted that the petitioner had acted in the best interest of the union as a chairman and during his tenure, union has flourished and the farmers are

benefited. Mr. Shelat submitted that the charges levelled against the petitioner would not warrant removal of the petitioner under section 76(B)(1) of the Act. Mr. Shelat submitted that as a Chairman, the petitioner has neither violated any provision of the Act nor by-laws of the society and therefore, drastic action of removal against elected officer should not have been resorted to. Mr. Shelat submitted that none of the acts alleged in different charges in the show cause notice was individual decision of the petitioner as chairman but were the decisions of the Board of Directors and for such decisions, the petitioner could not have been isolated for the purpose of taking action of removal under section 76(B)(1) of the Act. On the aspect of exercise of powers under section 76(B)(2) of the Act disqualifying the petitioner, Mr. Shelat submitted that the issuance of combined notice for removal and disqualification is not permissible in law. Mr. Shelat submitted that the word "so removed" used in sub-section (2) would suggest that initiation of action under section 76(B)(2) is only after action for removal is finalized under section 76(B)(1).

5. Mr. Shelat submitted that there is no notice for disqualification. To simply mention Section 76B(2) of the Act in the show cause notice issued only for removal of the petitioner would not make it also a notice for proposed action of disqualification, especially when the petitioner is asked to show cause only against the proposed action of removal. Mr. Shelat submitted that the petitioner in his reply has taken objection against issuance of the combined notice and replied only against the proposed action of removal by pointing out that taking of action under sub-section(2) of Section 76B was not permissible till order of removal was passed. Mr. Shelat submitted that even if the combined notice is permissible, the notice lacked particulars for proposed action under Section 76B(2) which affected the right of the petitioner to make effective representation against the proposed action of disqualification.

6. Learned Additional Advocate General Mr. Prakash Jani

appearing with learned Assistant Government Pleader Mr. Neeraj Ashar for the respondents submitted that bye-law No.44 cannot be read to say that Chairman is just to sit and watch the society functioning. Mr. Jani submitted that the Chairman is under obligation to discharge statutory duties as provided under the Act and Rules and Gujarat Co-operative Societies Rules, 1965 ('the Rules) and the Bye-laws and for his negligence in discharging duties or acting prejudicial to the interest of the society, he could be proceeded under Section 76B of the Act. Mr. Jani submitted that for such specific purpose, the legislature inserted the provision of Section 76B so that instead of superseding the committee as a whole, officer responsible for persistent default or negligent in discharging his duties or acting prejudicial to the interest of the society could be removed and disqualified to contest the election for specified time limit. Mr. Jani submitted that when in the definition of 'officer', Chairman is included, it could be said that actions proposed under Section 76B are intended against Chairman also if he is found responsible for the acts and omissions, covered in Section 76B. Mr. Jani submitted that serious charges which are 12 in number pointing to involvement of the petitioner in financial irregularities, negligence and acting against interest of the society are proved against the petitioner and therefore, respondent No.2 was justified in passing the order of his removal as Chairman and also disqualifying him to hold or contest election for any office in his society or in any other society for the period specified in the order and such action taken by respondent No.2 in exercise of the powers under Section 76B of the Act has rightly been confirmed by the Revisional Authority. Mr. Jani while giving history of the milk production in the State of Gujarat through Co-operative societies at grass root level, submitted that instead of working on co-operative principle for the benefits of the large number of the farmers connected with the society, the petitioner acted against the basic principles of co-operative movements and caused huge loss of more than Rs.25 crore to the society by his unauthorized

acts. Mr. Jani submitted that considering the gravity of charges proved against the petitioner after giving sufficient opportunities to the petitioner, the respondent No.2 arrived at just decision to remove the petitioner as Chairman and to disqualify him and this Court since not exercising the appellate powers, may not interfere with the impugned orders in exercise of the powers under Article 226 of the Constitution of India in absence of any flaw being pointed out in decision making process.

7. On the aspect of issuance of combined notice and making of combined order for removal and disqualification of the petitioner, Mr. Jani submitted that there is no bar in issuing the combined notice. Mr. Jani submitted that the petitioner having replied to the notice for both the proposed actions of removal and disqualification, cannot be heard to say that the combined notice was not permissible. Mr. Jani submitted that the petitioner has failed to show any prejudice in issuance of such combined notice to him and in fact, there is no prejudice to the petitioner as the petitioner appears to have given detailed reply under the legal advice. Mr. Jani submitted that considering seriousness of the charges proved against the petitioner, the respondent No.2 exercised his discretion to further disqualify the petitioner to hold and contest election for any office in his society or any other society and such exercise of discretion is based on the satisfaction arrived at by the respondent No.2 on passing the order of removal, and therefore, this Court may not interfere with removal or disqualification of the petitioner in absence of any prejudice shown to have been caused to the petitioner on account of issuance of combined notice.

8. Having heard learned advocates for the parties, it appears that by different 12 charges levelled against the petitioner in the show cause notice, the petitioner is alleged to have shown negligence towards discharge of his duties and acted against the interest of the society by causing huge financial loss to the society. Learned senior

advocate Mr. Shelat however while referring to bye-law No.44 of the Union submitted that as per bye-law No.44, Chairman is to have only control over all matters of the Union and is not to exercise control or supervise every act of the Union and there is no other bye-law providing for any other duty to be performed by the Chairman. It is his submission that all decisions are taken by the Board of Directors as per bye-law and executory function is of the Managing Director and therefore, Chairman cannot be made personally liable for any loss caused to the society. Such submission is however not possible to be accepted as the office of the Chairman is just not for mindless job on acts and affairs of the society but, the Chairman is in full charge over all affairs of the society and therefore, he shall be required to exercise control over all matters whenever he finds that affairs or acts being performed by the society through Board of Directors or other officers are not in accordance with the provisions of the Act and the Rules. The legislature therefore, in its wisdom has included the Chairman in the definition of the officer, which reads as under :-

> 2(14) "officer" means a person elected or appointed by a society to any office of such society according to its bye-laws; and includes a chairman, vice-chairman, president, vice-president, managing director, manager, secretary, treasurer, member of the committee, and any other person elected or appointed under this Act, the rules or the bye-laws, to give directions in regard to the business of such society;

9. Though the Society is not established by Act and thus not creature of the statute but after its incorporation under the provisions of the Act, its affairs are regulated by the provisions of the Act and its officers are to function as statutorily required. The restrictions imposed, and the statutory duties to be performed are noticed in different Sections of the Act.

10. Section 41(A) speaks about filing of returns on closure of every financial year to the designated authority with annual report of its activities, its audited statement of account, plan for surplus disposal

as approved by the general body of a society etc. Section 44 speaks about restrictions on borrowings. Section 45 speaks about restrictions of making of loans. Section 67 mandates every society to maintain reserve fund subject to the restrictions provided therein. Section 70 provides for contribution to public purpose which reads as under:-

> 70 : **Contribution to public purpose**
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> After providing for the reserve fund as provided in Section 67 and [for the bad debt reserve fund as provided in Section 67-A and] for the educational fund as provided in Section 69, a society may set aside a sum not exceeding twenty per cent of its net profits, and utilise from time to time, with the approval-
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> (a) of the Gujarat State Co-operative Union, If the society operates in more than one district, and
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> (b) of the District Co-operative Board, in any other case. the whole or part of such sum In contributing to any prescribed co-operative purpose, or to any charitable purpose within the meaning of section 2 of the Charitable Endowments Act. 1890 (VI of 1890). or to any other public purpose.
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> [[Provided that the provisions of this section shall not apply to the societies in the co-operative credit structure.]

Section 71 regulates investment of the funds by the society. Section 74(C) provides that elections of the members of the committees and of officers by the Committee of the societies mentioned therein shall be subject to the provisions of Chapter XI-A and shall be conducted in the manner laid by or under the said Chapter. The Union of which the petitioner is a Chairman is a specified society within the meaning of Section 74(C) of the Act. Considering the involvement of such societies in Co-operative movements on large scale business of such specified societies, especially Milk Unions where farmers in large number are associated with them and where for their benefits, Unions are to function, the legislature has provided for conducting the elections of the members of the committee and of the officers by committee under the supervision of the Collector and as provided by the statutory Rules known as Gujarat Co-operative Societies

Election to Specified Societies Rules, 1982. The office of the Chairman of such Union is, therefore, to discharge many important duties to be discharged under the Act and the Rules. Such chairman is statutorily required to see that the funds of Union are not utilized contrary to or beyond the purpose, objects and limitations provided under the Act.

11. In the above context, if the charges found proved against the petitioner are considered, they reflect that the Chairman has shown negligence towards his duties and acted prejudicially to the interest of the Union. Out of 12 charges proved, following charges need to be referred:-

(1) Charge No.(2) is about giving cattle feed to Maharashtra State Co-operative Milk Union free of costs worth Rs.18,64,05,903/- and with free transportation charges worth Rs.3,86,20,725/-. The respondent No.2 in his order has recorded that pursuant to the request made by the Maharashtra Union to the Chairman of Gujarat Co-operative Milk Marketing Federation (GCMMF) who happened to be the petitioner himself, for supplying the cattle feed for some cattle camps of drought affected areas in Maharashtra, the Board meeting of GCMMF was called for such purpose, but the same was postponed and during this time, Mehsana District Co-operative Milk Union, of which the petitioner is a Chairman, passed resolution and supplied 9500 MT of cattle feed and thereafter the said agenda was placed in the meeting of GCMMF but then the meeting was postponed and during such period also, Mehsana District Co-operative Milk Union provided 1200 MT of cattle feed, cost of such was Rs.22.50 crore. It is stated that nowhere request from Maharashtra Union was made to provide cattle feed free of cost. However, such cattle feed was provided by Mehsana District Co-operative Milk Union free of cost. It is further recorded that debit note for such supply was sent to the GCMMF which refused to accept such debit note and Maharashtra Milk Union reported that it neither received debit note nor cattle

feed. However, the fact remains that by incurring huge transportation charges of Rs.3,86,20,725/- cattle feed worth more than Rs.18 crore was sent to Maharashtra Milk Union. It is recorded in the order that such drought situation though prevailed at the same time in Saurashtra and Kutch areas in Gujarat, decision was taken to provide cattle feed for the said areas at the rate of Rs.14/- per kilogram and for Maharashtra Milk Union, the rate fixed was Rs.12.84 per kilogram. However, to Maharashtra Milk Union, no debit note was sent nor even Maharashtra Milk Union paid any amount and cattle feed supplied of huge amount was just as a donation at the instance of the Chairman-the petitioner.

(2) Charge No.(3) is about causing loss of Rs.64.25 crore for purchase of cattle feed without inviting competitive prices. It is recorded that no good explanation was given for not adopting the tender process by the Chairman. It is further observed that though repeatedly asked for information by the officers, no informations were provided.

(3) Charge No.(6) is that though there is no policy in the Union to employ any person on contract basis, still however 14 employees were taken on employment on contract basis. Staff set-up is not approved by the Union nor any recruitment policy is made and 14 persons employed were without following any recruitment procedure. On account of such recruitment, the Union has suffered financial loss and for such recruitment, the Chairman was responsible. The respondent No.2 has recorded in his order that the qualification and other requirement for the post for which the recruitment is to be made are required to be laid and fair and transparent procedure in the recruitment was required to be followed which was not followed. It is further recorded that earlier on such allegation of making the recruitment without following the transparent procedure, action under Section 76B of the Act was taken removing the petitioner from

the office of Chairman.

(4) Charge No.(9) is as regards purchase of sugar at a very high rate by one Shri P.K. Desai, who was Purchaser Manager. He was stated to have purchased 9000 MT of sugar from one Paradise Trade Link Pvt. Ltd., Mehsana at the rate of Rs.5/- instead of purchasing such big quantity of sugar from Co-operative Societies / Sugar Factories and by such purchase, the Union suffered loss of Rs.4.5 crore. The petitioner as a Chairman of the Union did not take any action against Mr. Desai of causing huge loss to the Union. Reply of the petitioner was that such charge was against Shri Desai and not against him and action should have been taken under Section 76B of the Act against Mr. Desai and that Union being autonomous body, its management was done by the Board of Directors and the Chairman could not be held responsible. The respondent No.2 however recorded that Mr. Desai not only paid advance of Rs. 1 crore to the said party but also purchased sugar at a very high rate and total loss of Rs.4,96,48,472/- was caused to the Union. It is recorded that the petitioner as Chairman of the Union has deliberately neglected to take any action and thereby failed to protect the interest of the members and the milk producers connected with the Union.

(5) Charge No.(10) is that though one Shri Khengarbhai Desai is not the Director of the Union but his wife is Director, still traveling expenses incurred by Shri Khengarbhai was debited to the account of the Union. During the inquiry, he deposited Rs.25,000/-. It is further stated in the charge that though said Shri Khengarbhai Desai is not Director, he was sent as a representative of the Union on the committee of Employees Co-operative Society, named 'Sahyog' and thus the bye-laws of the Union are breached. Reply of the petitioner was that for appointment of Shri Khengarbhai Desai on the Board of Employees Co-operative Society- "Sahyog", the said Society was responsible and Mr. Khengarbhai was appointed as Director of Sahyog only for one year and that his appointment was made by

other officers for which the petitioner was not responsible. The respondent No.2 has recorded in his impugned order that it was on account of the letter dated 10.6.2008 addressed by the petitioner as Chairman, Mr. Khengarbhai Desai was given appointment as representative of the Union in the said Society and his appointment was continued by letters of other officers named R.A. Modi and D.M. Chaudhary. It is recorded that Khengarbhai was not the Director of the Union but he was illegally appointed and continued as representative on Employees Society and since his appointment order was issued with the signature of the petitioner, the petitioner could be said to have knowledge about his appointment being head of the Union. It is further observed that being the Chairman of the Union, he did not take any action for unauthorized traveling expenses debited to the account of the Union and for works carried out by such unauthorized person.

(6) Charge No.(11) is for giving Rs.61,01,000/- in donation for charitable purpose contrary to Section 70 of the Act. The petitioner replied that he had not committed any breach of the provisions of the Act. The respondent No.2 has recorded in his impugned order that the petitioner presided over the special meeting which resolved to give Rs.21 lacs for “Motibai Ranchhodbhai Chaudhary Bhavan” and Rs.31 lacs for “Mansi Prithvisinh Bhavan”. It is observed in the order that late Mansi Prithvisinh was father of the petitioner and the petitioner since representing the caste to which he belongs, he donated the above-said big amounts for making halls/ (Bhavans) in the name of his father. There were other three donations made of Rs.1.50 lacs, Rs.2.51 lacs and Rs.5 lacs, out of which for Rs.2.51 lac it is stated permission was subsequently granted.

12. Learned senior advocate Mr. Shelat however submitted that Section 70 permits utilization of the funds, set-up by the society for charitable purpose with permission of the Gujarat State Co-operative Union and such permission was later on granted and therefore, for

the said donation, the petitioner could not be said to have acted prejudicially to the interest of the society. On this aspect, there is no dispute and in fact, it appears that permission was later on granted,

13. However, as regards other charges proved, as noted above, it could be said that the Union suffered heavy financial loss. Mr. Shelat submitted that for the decision of the Board of Directors regarding the acts alleged in the charges, the petitioner could not be isolated for the purpose of taking action under Section 76B of the Act. Mr. Shelat while referring to the bye-laws of GCMMF from the decision of Hon'ble Supreme Court, in the case of this very petitioner as a Chairman of GCMMF, reported in *AIR 2015 SC 1960*, pointed out the powers and functions of the Board, and submitted that as observed by Hon'ble Supreme Court, entire administration, management and control of the federation are vested in the Board of Directors and in the context of the present bye-law, all decisions were through the Board of Directors and therefore, the petitioner could not be made individually responsible for taking action under Section 76B of the Act. However, the Court is of the view that if the officer of the society could be individually found responsible for acting prejudicially to the interest of the society or causing any loss to the society by showing negligence towards performance of duties under the Act, Rules and bye-laws, action under Section 76B can very well be taken otherwise the very purpose of insertion of Section 76B in the Statute will be frustrated. The petitioner is found to have caused huge loss of more than Rs.25 crore for sending cattle feeds to Maharashtra Milk Union, for which the society has not received single penny from Maharashtra Milk Union. In fact, it was all throughout the stand of Maharashtra Milk Union that it has not received any debit note from Mehsana District Co-operative Milk Union. It could therefore be said that it was a kind of gift or donation of a very huge amount under the leadership of the petitioner. When Section 70 provides for restrictions on the donations; that too with permission of the Co-operative Union,

giving away of cattle feed of huge amount of more than Rs.18 crore and spending more than Rs.3 crore on transportation for such cattle feed to Maharashtra Milk Union, is nothing but an act undertaken prejudicial to the interest of the society. It is required to note that GCMMF had not accorded any approval in the meeting but postponed the meeting for such purpose and in the meantime, the petitioner as a Chairman of Mehsana District Co-operative Milk Union, has allowed supply of the cattle feed to Maharashtra Union. The petitioner being Chairman of the Union was required to look after the interest of the members and farmers connected with the Society, especially when for the regions of Saurashtra and Kutch in Gujarat, it was decided to send cattle feed at the rate of Rs.14/- per kilogram. Not only this but the petitioner has also tried to keep himself away from the charge as regards loss of Rs.4,96,48,472/- being the amount paid by Purchase Manger Shri D.P. Desai for purchase of sugar from a private party, though such purchase could have been made from Co-operative Societies or Sugar Factories. For such huge purchase, the petitioner could not be said to be unaware. If as a Chairman of the Union, the petitioner is to say that the Purchase Manager was responsible and action should be taken against him, situation might remain uncontrolled and might work against the interest of the society if the petitioner as a Chairman, is not to exercise control on such affairs connected with the Union. The petitioner, therefore, cannot be said to be not responsible for such loss caused to the Union. Thus, it could be said that the petitioner has shown sheer negligence in performance of his duty as Chairman. Other aspects stated in the charges as regards allowing one Shri Khengarbhai Desai to have traveling expenses debited to the account of the Union though he is not Director or holding any position in the Union and to further send him as representative of the Union to Sahyog Society, by office order signed by him, were certainly the acts prejudicial to the interest of the society. Such incident would suggest that unauthorized persons were allowed to function for and behalf of the Union under the

leadership of the petitioner. The recruitment of 14 persons on contract basis without setting qualifications and other criteria for their employment and without transparent recruitment process would lead to not only causing loss to the Union but will put the administration of the Union in the hands of persons not competent to hold the posts and resultantly may not be able to take appropriate decisions, especially when large organization of the Union with turnover of more than rupees one thousand crore, as pointed out by Mr. Jani, is to function on co-operative principles for the benefits of the members attached to such Union and farmers dependent on the business connected with the Union. To check the recruitment of unqualified persons and without following transparent recruitment process, the legislature in its wisdom has made following provisions in Section 76 of the Act:-

> 76. Appointment of officer and employees and their conditions of service.-
>
> The qualifications for the appointment of a manager, secretary, accountant or any other officer or employee of a society and the conditions of service of such officers and employees shall be such as may, from time to time, be prescribed.
>
> Provided that no qualification shall be prescribed in respect of any officer not in receipt of any remuneration.
>
> [Provided further that the qualifications for appointment of the Chief Executive Officer and the Directors of the Central Co-operative Banks and the State Co-operative Bank shall be such, as may be determined by the Reserve Bank of India from time to time:
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> Provided also that the Registrar of the Co-operative Societies or the Board of the Central Co-operative Banks or the State Co-operative Bank shall, remove at the request of Reserve bank, such Directors and Chief Executive officers who do not fulfill the criteria stipulated by Reserve Bank. However, the existing elected Director holding their post as such Directors on the date of the commencement of the Gujarat Co-operative Societies (Amendment) Act, 2008,shall continue to hold their offices till the expiry of their current remaining term.]

14. The petitioner as a Chairman in-charge of the entire organization of the Union was required to act in accordance with the intention of the legislature. Failure to act in consonance with Section 76 of the Act in the matter of recruitment of the officers/ employees on the establishment of the Union, the petitioner could certainly be said to have shown negligence to perform the statutory duties and acted prejudicial to the interest of the Union. This Court in the case of this very petitioner, reported in *2007(3) GLR 2204,* relied on by Mr. Jani while examining the action taken under Section 76(B)(1) of the Act has held and observed in para 38 as under:-

> 38. Section 76B of the Act permits removal of an officer if, in the opinion of the Registrar, any officer - (i) makes persistent default in performance of the duties imposed on the officer by the Act, or the Rules or the Bye-laws; (ii) is negligent in performance of the duties imposed on the officer by the Act, or the Rules or the Bye-laws; (iii) does anything which is prejudicial to the interests of the society; and (iv) stands disqualified by or under the Act, the Registrar may, after giving officer an opportunity of being heard, remove such officer. Each of the four defaults are in the alternative and though in given set of circumstances there may be some overlapping, yet there could be a situation where any one of the defaults may exist on its own. The contention that there was no breach of any duty on the petitioner in absence of any obligation may be correct in so far as the first two defaults are concerned. However, in relation to a default relatable to an action which is prejudicial to the interests of the society it is not necessary that there should be any duty/obligation cast upon the officer either under the Act or the Rules or the Bye-laws. The petitioner, as head of the Union, was holding a post in fiduciary capacity. Even if there has been no persistent default or negligence in discharge of his duties as chairman of the Union the petitioner has definitely acted in a manner which is prejudicial to the interests of the society. Employment of a person entails financial liability for a substantial period of time on a permanent basis. Employment of 461 persons would definitely be adverse to or prejudicial to the interests of the Union, unless and until it is shown that the recruitment of these many persons was warranted by facts and circumstances; it is shown that not only was the recruitment necessary and in interest of the Union, but the persons so employed were qualified and capable of handling the work assigned to each one of them. In absence of any such details being provided by the petitioner, despite having been called upon to do so, the respondent authority was justified in

raising an adverse presumption and exercising powers under Section 76B of the Act.

15. However, Mr. Shelat pointed out that against the judgment rendered in the said case, Letters Patent Appeal No.232 of 2007 was preferred and the Letters Patent Bench vide its order dated 21.6.2007 directed the Registrar to pass fresh order after according opportunity of being heard to the petitioner to put forth his case in full with all relevant materials before the Registrar and upon passing of fresh order, the order under challenge before learned Single Judge would stand superseded. It is pointed out that subsequent to this order, the Registrar reconsidered the matter and against the order of the Registrar, revision application was preferred where the order passed against the petitioner was set aside. Mr. Shelat, therefore, submitted that the judgment delivered by learned Single Judge in the said case cannot be relied on as the order of Division Bench would in effect set aside order of learned Single Judge. The Court finds that the view taken by learned Single Judge on the aspect of irregular recruitment causing prejudice to the interest of the Union and entails financial liability on permanent basis to the Union is not disturbed but even if ultimate effect of the order made by Letters Patent Bench is that judgment rendered by learned Single Judge cannot stand in the eye of law, this Court on independent examination of the issue raised before it finds that failing to discharge statutory obligation as required by Section 76 amounted to showing negligence towards statutory duties and prejudicial to the interest of the Union.

16. The Court finds that in the nature of charges proved, the view taken by respondent No.2 and affirmed by the Revisional Authority is not to be disturbed in exercise of the powers under Article 226 of the Constitution of India in absence of any complaint as regards decision making process. It is not disputed that fair and sufficient opportunities were given to the petitioner and therefore, no complaint could be made as regards decision making process to arrive at a decision by respondent No.2 to remove the petitioner in

exercise of powers under Section 76B(1) of the Act.

17. Mr. Shelat, however, relied on the decision of Hon'ble Supreme Court in the case of *State of U.P. and Another Vs. Johri Mal* reported in *AIR 2004 SC 3800* to contend that though this Court is not acting as Appellate Court, however, if the Court finds that the decision is irrational or illegal or for the reasons not germane to the exercise of powers, this Court may have judicial review of the decision under Article 226 of the Constitution of India. In the case of *Johri Mal (supra)*, Hon'ble Supreme Court has held and observed in para 28,29 and 30 as under:-

> 28. The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi judicial or administrative. The power of judicial review is not intended to assume a supervisory role or done the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the Courts step into the areas exclusively reserved by the supreme lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review Court. The limited scope of judicial review succinctly put are :
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> (i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.
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> (ii) A petition for a judicial review would lie only on certain well-defined grounds.
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> (iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.
>
> (iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that Tribunal functions within the limits of its authority and that its decisions do not occasions miscarriage of justice.
>
> (v) The Courts cannot be called upon to undertake the Government duties and functions. The Court shall not

ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies. (See Ira Munn v. State of Ellinois, 1876 (94) US (Supreme Reports) 113).

29. In Wade's Administrative Law, 8th edition at pages 33-35, it is stated:

"Review, legality and discretion:

The system of judicial review is radically different from the system of appeals. When hearing an appeal the Court is concerned with the merits of a decision: is it correct? When subjecting some administrative act or order to judicial review, the Court is concerned with its legality; is it within the limits of the powers granted? On an appeal the question is 'right or wrong?' On review the question is 'lawful or unlawful?'

Rights of appeal are always statutory. Judicial review, on the other hand, is the exercise of the Court's inherent power to determine whether action is lawful or not and to award suitable relief. For this no statutory authority is necessary; the Court is simply performing its ordinary functions in order to enforce the law. The basis of judicial review, therefore, is common law. This is none-the-less true because nearly all cases in administrative law arise under some Act of Parliament. Where the Court quashes an order made by a minister under some Act, it typically uses its common law power to declare that the Act did not entitle the ministers to do what he did and that he was in some way exceeding or abusing his powers.

Judicial review thus is a fundamental mechanism for keeping public authorities within due bounds and for upholding the rule of law. Instead of substituting its own decision for that of some other body, as happens when on appeal, the Court on review is concerned only with the question whether the act or order under attack should be allowed to stand or not. If the Home Secretary revokes a television licence unlawfully, the Court, may simply declare that the revocation is null and void. Should the case be one involving breach of duty rather than excess of power, the question will be whether the public authority should be ordered to make good a default. Refusal to issue a television licence to someone entitled to have one would be remedied by an order of the Court requiring the issue of the licence. If administrative action is in excess of power (ultra vires), the Court has only to quash it or declare it unlawful (these are in effect the same thing) and then no one need pay any attention to it. The minister or tribunal or other authority has in law done nothing, and must make a fresh decision."

> 30. It is well-settled that while exercising the power of judicial review the Court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the Court is not competent to exercise its power when there are serious disputed questions of facts; when the decision of the Tribunal or the decision of the fact finding body or the arbitrator is given finality by the statute which governs a given situation or which, by nature of the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the Court of judicial review can reappreciate the findings of facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch-stone of the tests laid down by the Court with special reference to a given case. This position is well settled in Indian Administrative Law. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of facts by the decision maker.

18. In the case of *Sub-Divisional Officer, Konch Vs. Maharaj Singh* reported in (2003)9 SCC 191, Hon’ble Supreme Court has held that while exercising powers under Article 226 of the Constitution of India, the High Court is not sitting in appeal as it has got supervisory jurisdiction. Mr. Shelat submitted that action of removal of the elected Chairman is drastic and cannot be lightly resorted to and therefore, the Court needs to examine whether the charges stated to be proved would fall in any of the categories of Section 76B(1) of the Act and such would not be exercise of the appellate jurisdiction. The Court, however, having examined the impugned orders, finds that after due consideration of the reply and the material, the authorities below have reached to the decision for removal of the petitioner as Chairman and such decision in absence of any flaw being pointed out in decision making process cannot be interfered with in exercise of the powers under Article 226 of the Constitution of India.

19. Then comes the issue concerning exercise of powers under Section 76B(2) of the Act. In this connection, the contentions raised on behalf of the petitioner are that there was no notice in the eye of law for proposed action of disqualification and that it would be only after order for removal is passed, the action under Section 76B(2) of the Act could be taken and therefore, issuance of the combined notice under Section 76B(1) and (2) of the Act was not permissible. Before examining such contentions, Section 76B needs to be referred, which reads as under:-

> 76B : Removal of officer:
>
> (1) If in the opinion of the Registrar, any officer makes persistent default or Is negligent In performance of the duties imposed on him by this Act or the rules or the bye-laws or does anything which Is prejudicial to the Interests of the society or where he stands disqualified by or under this Act, the Registrar may, after giving the officer an opportunity of being heard, by order remove such officer and direct the society to elect or appoint a person or a qualified member in the vacancy caused by such removal and the officer so elected or appointed shall hold office so long only as the officer In whose place he is elected or appointed would have held If the vacancy had not occurred.
>
> (2) The Registrar may, by order, direct that the officer so removed shall be disqualified to hold or to contest election for any office in the society from which he is removed and in any other society for a period not exceeding four years from the date of the order and such officer shall stand disqualified accordingly.

20. Sub-Section (1) provides for power of the Registrar to remove an officer by an order after giving such officer an opportunity of being heard and to direct the society to elect or appoint a person or qualified member in the vacancy caused by such removal. However, in Sub-Section (2), no such requirement of giving an opportunity to the officer of being heard is provided but it provides for power of the Registrar to direct by an order that the officer, “so removed” shall be disqualified to hold or contest election for any office in the society from which he is removed and in any other society for a period not exceeding four years (now six years) from the date of the order and

such officer then shall stand disqualified accordingly. However, since such order of disqualification would entail civil consequences for the officer so removed, principles of natural justice are to be complied with though specific words, “after giving an opportunity of being heard” are not used, and to follow such principles, a notice for proposed action of disqualification is required to be issued to give him sufficient opportunity to represent his case against proposed action. Therefore, in the context of the provision of Section 76B of the Act, the Court needs to examine whether before the order of removal could be made, action for disqualification under sub-section (2) could be initiated and whether separate order is required for disqualification under sub-section (2) after serving the order of removal to the petitioner and whether mere reference to Section 76B(2) in the show cause notice for removal could be said to be notice for proposed action of disqualification under sub-section (2).

21. Mr. Jani submitted that there is no bar in issuing combined notice proposing both the actions of removal and disqualification. However, the question is not of bar in issuing the combined notice but any notice to meet with the principles of natural justice has to be for or concerning the event giving rise for proposed action. There is no concept of issuing notice in advance. If such notice in advance is issued for the proposed action to follow the event to happen, it could be said that the action proposed is prejudged, predetermined and as a result of bias attitude. In fact, reading the language of sub-sections (1) and (2) of Section 76B of the Act independently, one would find that the legislature intended to pass two different and distinct orders at two different stages. In both the sub-sections, the words “by order” are used. Therefore, removal of an officer is contemplated by order to be passed at first in point of time and then by separate order, the Registrar may direct that the officer “so removed” shall be disqualified to hold or to contest election for any office in his own society or in any other society for a period which may be fixed by the

Registrar within the ceiling limit and for such order to be separately passed, principles of natural justice, as stated above, are to be followed.

22. In the case of *Jamnadas Vaghjibhai Patel Vs. Karamsad Urban Co-operative Bank Limited* reported in *1986(1) GLR 304,* relied on by Mr. Shelat, this Court has held and observed in para 4 as under:-

> 4. Even a bare look at the text of Section 76-B(1)(2) makes it clear that under that Section 76-B the Registrar has got two-fold powers. Under Sub-section (1) he has got power to remove a Director, but that power is obviously limited to the remainder of the terms of his. This is very clear from the latter part of Sub-section (1). After removal an officer, the Registrar has to direct the Society to appoint a person or a qualified member in the vacancy caused by such a removal and the new incumbent shall hold the office so long only as the Officer in whose place he is elected or appointed would have held if the vacancy had not occurred. "This means and must mean that removal cannot be beyond the period of his office. The petitioner's office was to come to an end in August 1984. Therefore, his removal, though stated to be for one year, was operative only till August, 1984. Under Sub-section (2) it was open to the Registrar to further direct that the petitioner who was removed under Sub-section (1) would stand disqualified to hold the post or contest the election for any office of the society for a period not exceeding four years from the date of the order of disqualification. Disqualification, therefore, does not per se follow removal. It is to be specifically and separately ordered. The power to disqualify is discretionary as the auxiliary verb 'may' clearly indicates. The Registrar, unfortunately, did not know this fine distinction of law. He simply jumbled up both the sub-sections in his order annexure-A. The operative part of the order is only for removal for one year which for all practical purposes was removal only upto August, 1984. The Co-operative Tribunal in the revision against that order went further to say that because of that removal he stood disqualified for one year. If the removal was only upto August, 1984, how can there be consequential, or as a matter of course, disqualification operative beyond August, 1984. This is a clear example, how the offices and Judicial Tribunals clothed with judicial powers are manned by people not knowing law and such mistakes are being committed by them.

23. Mr. Jani however submitted that the above-said decision was in different fact situation inasmuch as in the said case, the petitioner’s

office came to an end in the month of August 1984 and he was prevented to contest the election till March 1985 on the ground that removal would end in the month of March 1985. However, the Court finds that the issue as regards passing of specific and separate order for disqualification is addressed which would fortify the view being taken in the present case.

24. In the case of *Kantilal Chandulal Shah Vs. G.J. Jose and Another* reported in *1987(1) GLH 563*, relied on by Mr. Shelat, the Court has held and observed in para 7 and 8 as under:-

> 7. A mere look at section 49(2) of the Gujarat Panchayats Act and reading it in juxtaposition with section 76B(2) of present Act, leaves no room for doubt that the Legislature, in its wisdom, while enacting section 76B(2), did not contemplate a situation in which the competent authority can order disqualification of an officer of the society who is not first removed by him for alleged misconduct. In short, no order of disqualification under section 76B(2) can be passed by the competent authority without there being in the field, as a condition precedent, a valid order of removal of the concerned officer from the membership of the managing committee of the society. May be, this is a case of omission on the part of the Legislature which be willful or otherwise. But as far as the provision stand on the statute book, there cannot be any escape from the conclusion that no order of disqualification under section 76B(2) can be passed against an officer of the society unless, in the first instance, there is a valid order in the field under section 76B(1) ordering his removal from the concerned office occupied by him in the managing committee of the society. Mr. Vakharia's contention, therefore, has to be accepted.
>
> 8. Mr. Trivedi then submitted that if the authorities have come to the conclusion that the called resignation of the petitioner was not genuine, it would amount to their impliedly passing the order of removal. In this connection, he invited my attention to the revisional order passed by the first respondent wherein, in the penultimate page of the order, at second para thereof, the following observations are made by the revisional authority: "It was urged that the present appellant had tendered his resignation from the board of directors on September 12, 1986. In support of this, a copy of the agenda dated september 9, 1986, where at serial No.3, mention is made of the item regarding resignation members and transfers. From the records of the District Registrar, it is clear as to when and whether the present appellant has tendered his resignation and the same was accepted by the board of directors as enjoined by bye law

29(2)(1). In any case, not was produced to that effect."

It is true that the revisional authority found that there was not clear evidence about the petitioner from the board of directors of Navdeep Co-operative Bank. However, this is neither here not there. It is the first authority, viz, the second respondent who has to hold that the so called resignation was a make-believe or was a camouflage and that the petitioner has continued to occupy the post of a director and, therefore, he was required to remove the petitioner first before passing any disqualification order against him. That exercise was never undertaken by the second respondent. Instead, as seen earlier, assuming that the resignation was valid, he did not pass any removal order but straight a way proceeded to pass a disqualification order. Under these circumstances, the observation of revisional authority in the aforesaid para cannot be of any avail to the respondents. Ultimately the revisional authority has confirmed the order of the second respondent by dismissing the revision-cum-appeal. Therefore, the operative order which holds the field against the petitioner is the order passed by the second respondent directing him to be disqualified and for a period of four years from holding any elected post in the concerned bank. Now, that order squarely falls under section 76B(2) for the Act. As there is no order passed by the second respondent removing the petitioner from the directorship of the bank under section 76B(1) of the Act, it must be held that the very condition precedent which must exist for passing a disqualification order under section 76B(2) is not available in the present case. It must be kept in view that section 78B(2) in terms provides that the Registrar may, by order, direct that the officer so removed shall be disqualified. Thus, the removal order under section 76B(1) must precede the order of disqualification under section 76B(2). In the present case, admittedly, there is no removal order in the filed. Consequently the disqualification order must be treated to be entirely without without jurisdiction and ultra vires the scheme of the act and de hors the provision of section 76B(2).

Only on this short ground, this petition will have to be allowed. it is made clear that I express no opinion on the merits of the controversy between the parties or on the merits of the charge leveled against the petitioner. Only on the aforesaid technical ground, this petition is allowed. Rule is made absolute. Orders at annexures A and B are quashed and set aside. Consequently, there will remain no questions of the petitioner being held disqualified from being elected to Navdeep Co-operative Bank or any other co-operative society for a period of four years as earlier directed by the second respondent by the impugned order. There will be no order as to cost. As the petition is allowed and the impugned orders are set aside, ad interim relief granted by this court earlier in the present petition will automatically stand

vacated.

25. Mr. Jani however submitted that in the said case, the Court was not called upon to decide the issues about requirement of separate notice and passing of separate order for disqualification and therefore, in the fact situation of the present case, the judgment will have no application. In the said case, the petitioner was issued notice to show cause why he should not be removed from the office of the Director of the society. He was also called upon to show cause why he should not be declared disqualified from being elected as Member of the Managing Committee. Thus, notice was issued for proposed action under Section 76B(1) as well as Section 76B(2) of the Act. However, after service of the show cause notice, the petitioner of the said case had tendered resignation as Director of the Bank and said resignation was accepted by the Bank and such fact was pointed out to the concerned authority and the concerned authority was requested to drop the proceedings proposed to be taken against him as per the show cause notice. However, the concerned authority instead of dropping the proceedings, directed that the petitioner should be disqualified from being elected as Member of the Managing Committee of the Bank or any other Co-operative Society for a period of four years. Such disqualification was without passing any order for removal.

In such fact situation, it was held that no order of disqualification under Section 76B(2) of the Act can be passed against an officer of the society “unless in the first instance, there is valid order in the field under Section 76B(1) ordering removal by the concerned authority”.

26. Thus, what emerges from the provisions of Section 76B of the Act, as interpreted in above-said two decisions, is that there has to be an order of removal of an officer at the first instance and following such order of removal, a decision is to be taken by a separate order

for his disqualification. It is only by such reading of provisions of Section 76B, a harmonious meaning could be assigned to the words 'by order' and 'so removed' used therein. For taking such decision by separate order under sub-section (2), element of proportionality has got to be entered in the mind of the Registrar as the Registrar is to decide whether disqualification of officer removed should be restricted to his own society or additionally for any other society and also for period of such disqualification. The words, "from the date of the order and such officer shall stand disqualified accordingly", used in sub-section (2) would suggest that disqualification is to commence after separate order is made under sub-section (2) and in proportion to the decision taken for such disqualification. There is one more reason why initiation of action under sub-section (2) for disqualification is required by separate notice and separate order. The notice to be issued for disqualification cannot be a mere formality. When the order of removal is passed under sub-section (1), officer on receipt of the order of removal and the notice proposing disqualification will have an opportunity to represent before the concerned authority either not to pass order of disqualification in the nature of charge considered to be proved against him or for taking lenient view of the matter. Either way, removed officer would have fair opportunities to represent his case against the proposed action of disqualification only after he is made aware about the grounds of his removal and therefore, the legislature appears to have intended to make separate provision for disqualification in sub-section (2) requiring to make separate order. Therefore, if separate order is to be made only after the order of removal is passed, there is no question of issuing any notice proposing disqualification with notice for removal. The Court, therefore, finds that action taken for disqualification of the petitioner runs counter to the provisions of sub-section(2) of Section 76B of the Act.

27. Assuming that the combined notice was permissible, then also,

as submitted by Mr. Shelat, whether there was in fact a notice in the eye of law for proposed action of disqualification. The show cause notice at Annexure-A is titled as 'Show Cause Notice under Section 76(B)(1)(2) of the Act'. However, in the language of the notice at Annexure-A, the petitioner was asked only to show cause why he should not be removed from the office of Chairman, and while asking the petitioner to show cause against the proposed action of removal, sub-section (2) is mentioned with sub-section (1) of Section 76B of the Act. The petitioner is thus not asked to show cause as to why he should not be disqualified after his removal from the office of Chairman. Mr. Jani however submitted that the notice since clearly mentioned as issued under Section 76B(1) and (2), the petitioner was put to show cause for both the proposed actions and the petitioner well understood and took such notice for both the proposed actions and therefore, he has given long reply, including the reply not to take proposed action of disqualification. Mr. Jani submitted that his long reply in two parts, i.e. first provisional reply and then final reply, would go to suggest that the reply is given under the legal advice and it is not possible to believe that the petitioner had no notice for proposed action of disqualification. To support his contention, Mr. Jani drew the attention of the Court to a judgment dated 7.3.2011 rendered by this Court in Special Civil Application No.2053 of 2011 with Special Civil Application No.2055 of 2011, especially para 6(ii), which reads as under:-

> 6(ii) The authorities cited at the bar on behalf of the State by learned AGP, would have no applicability, so far as the present case is concerned, as this Court while dealing with the very provision of Section 76B(2) in case of Kantilal Chandulal Shah Vs. G.J. Jose and Another (supra), held that when power of disqualification is to be exercised, then the delinquent has to be especially informed and notice is required to be issued. In the instant case, the Court would have been persuaded to accept the submission of learned AGP, had there been, on facts, a case where the petitioners did exercise their right to reply to the notice qua disqualification also, but reading of the entire reply, it

> appears that there did not make any averments as to why they should not be disqualified. In other words, assuming for the sake of examining the submission that there was sufficient notice to the petitioners, but petitioners have chosen not to respond to the notice qua the aspect of disqualification as they were not called upon to explain and give cause with regard to the likelihood of the power being exercised under Section 76-B (2) of the Act, and therefore, in my view the exercise of disqualifying the petitioners being per-se illegal and contrary to the provision of law, the same cannot be sustained and therefore it is required to be quashed and set aside and accordingly the orders i.e. original order dated 04.01.2011, passed by District Registrar, Co-operative Societies, and the Appellate Order dated 28.02.2011, passed by the Additional Registrar (Appeals) in Revision Appeal No.8/2011 and 9/2011, is hereby quashed and set aside.

28. The case however on consideration of the provisions of Section 76(B(2) would stand somewhat on different footing. This Court when is taking a view that action could be initiated under sub-section (2) only after passing the order of removal, issuance of notice prior thereto for proposed action of disqualification would not be permissible and therefore, sending the reply to the show cause notice could be considered only for proposed action of removal. In the above-referred decision, the Court has not addressed such issue. The Court in the said case has also not positively decided that giving of reply would obviate the requirement of a due notice. Therefore, the observations made therein would lend no support to the contention raised by Mr. Jani. Even if such contention is considered in the context of the reply given by the petitioner, it does not appear from the reply, provisional and final, that the petitioner has replied against the proposed action of disqualification as the petitioner has in clear terms stated in the reply that the action and the order under sub-section (1) and sub-section (2) are different and distinct and action under sub-section (2) could be initiated only after the order of removal is passed. It is stated that the impugned notice suffers from misreading of the provisions of Section 76B of the Act. It is further stated in the final reply that the jurisdiction of the Registrar under sub-section (2) is discretionary and therefore, till the order of removal is passed, no

proceedings under sub-section (2) could be initiated. It is specifically contended in para 5 of the reply that unless the contingencies on full-fledged inquiry, as contemplated under sub-section (1) take place, the Registrar has got no jurisdiction to initiate action under sub-section (2). Thus, notice under sub-section (2) is opposed in the reply on the ground of lack of jurisdiction etc. of the Registrar. Such could not be said to be a reply on merits against the proposed action of disqualification. In such view of the matter also, the observations made by this Court in the above-referred decision will not support the contention raised by Mr. Jani. The issuance of notice before taking action under sub-section (2) is with purpose to enable the noticee to make fruitful and effective representation against the action proposed.

29. Mr. Jani however submitted that the petitioner availed of full opportunities to resist the action under sub-section (2). However, any notice not specifying the grounds for proposed action is no notice in the eye of law as it would deprive the very valuable right of the noticee to persuade the concerned authority not to take proposed action or to take less drastic action. The noticee could be given an opportunity to effective represent against the proposed action of disqualification only when he is made aware of the grounds with full particulars for which action is proposed in the context of the provisions of Section 76B(1).

30. In the case of *Oryx Fisheries Pvt. Ltd. Vs. Union of India and Ors,* reported in *2010(12) JT 35,* Hon'ble Supreme Court has observed in para 31 as under:-

> 31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling

> that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

31. In the facts of the case, the Court, therefore, finds that the order disqualifying the petitioner to hold the office or to contest the election in his society and in any other society for the period prescribed in the order is not according to law and therefore, same is required to be quashed and set aside. The petition is therefore, required to be partly allowed.

32. For the reasons stated above, the petition is partly allowed. The impugned order insofar as the petitioner is removed from the office of the Chairman in exercise of the powers under Section 76B(1) of the Act passed by the respondent No.2 and affirmed by the Revisional Authority is not disturbed. However, the order disqualifying the petitioner to hold or to contest election for any office in his society and in any other society for a period of three years in exercise of the powers under Section 76B(2) of the Act passed by the respondent No.2 and affirmed by the Revisional Authority is quashed and set aside. Rule is made absolute to the aforesaid extent.

33. At this stage, learned Assistant Government Pleader Mr. Ashar requests to stay the present order. However, the Court once having found that the action/ order disqualifying the petitioner in exercise of the powers under Section 76B(2) of the Act is bad in law, the request to stay the order cannot be entertained. The request is therefore, rejected.

Sd/-
(C.L. SONI, J.)

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